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August 29, 2013

To: Supervisor Mark Ridley-Thomas, Chairman
Supervisor Gloria Molina
Supervisor Zev Yaroslavsky
Supervisor Don Knabe
Supervisor Michael D. Antonovich

From: William T Fujioka
Chief Executive Officer 

SACRAMENTO UPDATE - PROPOSED PRISON POPULATION REDUCTION PLANS

Executive Summary

This memorandum is to provide the Board a report on a prison population reduction plan proposed by Governor Brown and the Assembly, as well as an overview of the framework for alternative Senate legislation likely to be introduced by early next week.

Background

In August 2009, the Federal three-judge panel overseeing several court cases against the State found that overcrowding conditions in the California prison system prevented the provision of adequate levels of mental health and health care services which were deemed to be unconstitutional. The three-judge panel ordered the State to reduce the prison population to 137.5 percent of prison design capacity in the State's 33 institutions by June 2013. The State appealed that ruling to the U.S. Supreme Court, but in May 2011, the Supreme Court upheld the lower court ruling and ordered the State to reduce the prison population.

As a result of the Supreme Court's decision, the Governor and the Legislature enacted the 2011 Public Safety Realignment which included significant changes to sentencing laws and shifted the responsibility for the supervision and incarceration of large numbers of criminal offenders from the State to counties.

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Since implementation of 2011 Public Safety Realignment in October 2011, the State prison population has been reduced by approximately 25,000 inmates. However, the current prison population is approximately 119,000 inmates, or about 149 percent of design capacity, and the Brown Administration has conceded that the State cannot meet the 137.5 percent threshold without further population reduction measures.

In January 2013, the State filed several motions with the three-judge panel requesting that the judges terminate a portion of the litigation and vacate or modify the population reduction order. The judges rejected the State's motions and ordered the State to meet the 137.5 percent population cap by December 31, 2013.

After several legal challenges at the State level failed, in July 2013, the State filed a request for a stay of the three-judge panel's population reduction order with the U.S. Supreme Court. On August 2, 2013, the U.S. Supreme Court denied the State's request.

Governor's Prison Population Reduction Plan

On August 27, 2013, the Governor, along with Assembly Speaker Pérez, Senate and Assembly Republican Leadership, and numerous law enforcement and crime victims groups, announced a plan to meet the three-judge panel's population reduction order without the early release of any State prison inmates. The plan would rely on increased capacity solutions to comply with the court-ordered 137.5 percent threshold by December 31, 2013.

During the press conference, the Governor emphasized the need to find an immediate solution to meet the December 2013 court order but also expressed his commitment to a broader policy discussion on longer-term potential changes to the prison and criminal justice systems.

As amended on August 27, 2013, **SB 105 (Emmerson)**, would authorize the California Department of Corrections and Rehabilitation (CDCR) to enter into agreements with public and private, State and out-of-State facilities to house State prison inmates and would appropriate funding contained in the State's reserve to fund this capacity expansion.

Specifically, SB 105 would:

- Postpone the closure of the California Rehabilitation Center located in Norco, California scheduled to close by December 31, 2016;

- Designate, until January 2017, the privately-run California City Correctional Center in California City as a de-facto State prison and would allow the State to staff that facility with correctional employees;
- Authorize CDCR, until January 2017, to enter into agreements with a city, county, or city and county to permit the transfer of State prisoners to a local jail or adult correctional facility;
- Authorize CDCR, until January 2017, to enter into agreements with private entities to obtain secure housing in California or any other state and would waive any State process or regulation relating to the procurement process for those agreements;
- Authorize CDCR, until January 2017, to enter into agreements for the transfer of prisoners to community correctional centers in California;
- Allow CDCR, until January 2017, to transfer an inmate to a facility in another state without the consent of the inmate;
- Appropriate \$315.0 million in FY 2013-14 from the State General Fund to CDCR to carry out the provisions of the measure;
- Require the Administration to assess the State prison system including capacity needs, prison population levels, recidivism rates and factors affecting crime rates; and
- Require the Department of Finance to report to the Legislature on balanced solutions that are cost-effective and protect public safety no later than January 2015.

SB 105 is supported by: the Los Angeles Sheriff's Department; California State Sheriff's Association; Chief Probation Officers of California; California State Association of Counties; Urban Counties Caucus; California District Attorneys' Association; California Highway Patrol; California League of Cities; California Police Chiefs' Association; California Correctional Peace Officers Association; Crime Victims Action Alliance and Crime Victims United. There is currently no registered opposition on file.

SB 105 passed out of the Assembly Budget Committee on August 29, 2013, by a vote of 21 to 0.

Senate Democratic Proposal

On August 28, 2013, Senator President Pro Tempore Darrell Steinberg, along with members of the Senate Democratic Caucus, announced significant concerns with the capacity solutions contained in the Governor's and Assembly plan and unveiled a framework for a counter-proposal to meet the three-judge panel's ordered population cap.

Based on an initial analysis of the general framework distributed by Senator Steinberg, the Senate proposal relies on the following three elements:

- A settlement agreement between the State and the plaintiffs in the legal action resulting in the three-judge panel's order to include the formation of a State panel of experts which would establish a prison population level necessary to provide a constitutional level of medical care and allow for a three-year extension, until December 2016, for the State to meet the established population cap;
- The creation, by October 2013, of an Advisory Commission on Public Safety comprised of 18 members appointed by the Governor, the Chief Justice, the Legislature, and the Attorney General to develop statutory and regulatory recommendations for the Legislature to address long-term prison capacity issues, including changes to criminal sentencing and evidence-based programming;
- The establishment of a Performance Incentive Public Safety Grant Program, modeled after SB 678 of 2009, which would allocate \$200.0 million Statewide initially and \$300.0 million thereafter to counties to incentivize local criminal justice practices that result in improved outcomes. The Grant Program would initially provide start-up seed money to all counties for collaborative courts, mental health, substance abuse and reentry programs. Following the seed-money, funding to counties would be based solely on a formula tied to county felony crime rate reductions as measured by new prison admissions.

A general overview of the Senate Plan is included in Attachment I. Legislative language is expected to be in print by early next week outlining the details of the Senate proposal, and Senator Steinberg indicated the legislation would be heard in the Senate Budget Committee by the end of next week.

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After the Senate press conference, both Governor Brown and Assembly Speaker Pérez issued statements rejecting the Senate proposal and emphasizing the need to focus on SB 105 and immediate capacity solutions to address the prison population reduction order.

As soon as legislation related to the Senate plan is introduced, this office will work with affected departments to analyze the details of the proposal and provide a report to the Board.

We will continue to keep you advised.

WTF:RA
MR:KA:ma

Attachment

c: All Department Heads
Legislative Strategist
Local 721
Coalition of County Unions
California Contract Cities Association
Independent Cities Association
League of California Cities
City Managers Associations
Buddy Program Participants

The Safe, Sustainable and Fiscally Responsible Plan to Reduce Crime and Settle the Prison Overcrowding Crisis

August 28, 2013

Key Terms

- 1) The parties to the *Plata/Coleman* Three Judge Panel Population Order would enter into a settlement agreement no later than September 13, 2013, with respect to prison overcrowding pursuant to the terms outlined in this proposal.
- 2) The parties would agree to abide by a population cap as determined by a state panel of experts appointed as follows: 2 members appointed by Governor, 2 members named by the Plaintiffs, and one member who shall be a justice of the Court of Appeal with expertise in prison management issues appointed by the Chief Justice, who shall serve as chair and vote only in the event of a tie. The panel shall establish the population level that would be necessary to provide a constitutional level of care. The level would be measured by a percent of design capacity.
- 3) Plaintiffs would agree to a time extension of no later than December 31, 2016, for the state to meet and thereafter not exceed the established cap.
- 4) The State would agree to comply with, and reduce the population to at least, the established cap, and adopt necessary measures to ensure that the population remains at or below the cap.
- 5) The State would agree to withdraw its appeal of the Population Cap Order. The parties would agree to jointly seek a stipulated agreement that the existing Population Cap Order not be enforced.
- 6) The State would create in statute no later than October 2013 an 18-member Advisory Commission on Public Safety with the following key features:
 - Advisory, not mandatory body.
 - Authorized and funded to hire staff, pay expenses and travel for members, etc.
 - CDCR, DOJ, and other necessary state agencies would provide technical assistance.
 - Appointments: 11 gubernatorial, 2 California Chief Justice, 4 legislative, and 1 Attorney General .
 - Governor would appoint the chair and executive director.
 - Composition: 8 of 18 dedicated law enforcement; others include defense bar, academic, advocate, judicial and expert.
 - Funded and assembled immediately.

- Duties: Develop statutory and regulatory recommendations for the Legislature and Governor to consider in 2015 that would address long-term prison capacity, staying within the cap, including changes in criminal sentencing and evidence-based programming for criminal offenders.
 - Prepare sentencing credit recommendations for CDCR secretary (and/or Legislature and Governor) no later than December 1, 2014.
- 7) The State would establishes in state law no later than October 2013 a “Performance Incentive Public Safety Grant Program” (\$200 million, growing to \$300 million annually) to reduce prison admissions in the mid- and long-term through more effective local criminal justice practices and programs:
- Grants are state general funds awarded to county Boards of Supervisors to incentivize local criminal justice practices and programs that result in improved outcomes among criminal offenders and a reduced prison population.
 - Grants would be modeled after SB 678 (the California Community Corrections Performance Incentives Act of 2009) which now supports more successful probation supervision practices for felony offenders. In 2011, the second calendar year of SB 678 implementation, California probation departments successfully diverted an average daily population of over 9,500 offenders from going to state prison. This action resulted in a 2011 statewide savings of approximately \$284 million (with total savings of \$536 million over the first three years), and half of those savings were distributed to the counties to reinvest in local probation department efforts to continue their successful supervision practices.
 - Funding available solely for locally-based programs and practices demonstrated to reduce the incidence of crime among offenders on mandatory supervision, post-release community supervision, probation and juveniles.
 - Initial start-up seed money granted to all counties for collaborative courts, mental health, substance abuse and reentry programs demonstrated to reduce recidivism.
 - Following period of seed money, grants are based solely on a formula tied to county felony crime rate reductions as measured by new prison admissions.
 - Establish benchmarks monitored by DOF. DOF would determine allocation based on performance. DOF would report to JLBC on allocation. Funds not spent from this program could be budgeted along with any other necessary funds to provide for increased capacity in order to meet any future deadlines.
8. The Federal Three Judge Panel would only enforce the terms of this Settlement Agreement.

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